

RCE/PFW

MAY 11 2006

Practitioner's Docket No. 51473

PATENT

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Gallagher et al.

Serial No.: 10/661,051

Group No.: 1765

Filed: 09/13/2003

Examiner: Kin-Chan Chen

For: AIR GAP FORMATION

**Mail Stop RCE  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450**

**REQUEST FOR CONTINUED EXAMINATION (RCE)  
(37 C.F.R. 1.114)**

1. Applicant hereby requests continued examination, in accordance with 37 C.F.R. Section 1.114, for the above identified application.

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**CERTIFICATION UNDER 37 C.F.R. SECTIONS 1.8(a) AND 1.10**

*(When using Express Mail, the Express Mail label number is mandatory;  
Express Mail certification is optional.)*

I hereby certify that, on the date shown below, this correspondence is being:

**MAILING**

deposited with the United States Postal Service in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

**37 C.F.R. Section 1.8(a)**

**37 C.F.R. Section 1.10**

with sufficient postage as first class mail.  as "Express Mail Post Office to Addressee"  
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**TRANSMISSION**

facsimile transmitted to the Patent and Trademark Office (703) \_\_\_\_\_

Date: 5/5/2006

  
Signature

05/12/2006 NHGUEN1 00000090 181850 10661051

01 FC:1801 790.00 DA  
02 FC:1251 120.00 DA

Deanna M. Rivernider

*(type or print name of person certifying)*

**WARNING:** 35 U.S.C. 132(b) and Section 1.114 provide for the continued examination of an application and not examination of a continuing application). Accordingly, the Office will not permit an applicant to obtain continued examination on the basis of claims that are independent and distinct from the claims previously claimed and examined. Notice of March 10, 2000, 65 Fed Reg 14865, at 14868.

**WARNING:** A continued examination request **cannot** be made if at least one office action under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 161 has not been mailed. The provisions of 37 C.F.R. 1.114 also do not apply (1) to a provisional application, an application for a utility or plant patent filed under 35 U.S.C. 111(a); (2) an international application filed under 35 U.S.C. 363 before June 8, 1995; (3) a patent under reexamination; or (4) an application for a design patent. 37 C.F.R. Section 1.114(d).

### TIME REQUEST IS BEING MADE

2. This request is being submitted (*check appropriate item(s) below*):

- i.  Prior to abandonment of the application
- ii.  Payment of the issue fee
  - Prior to payment of issue fee
  - Issue fee has been paid but a petition under Section 1.313 has been granted
- iii.  Prior to a decision on appeal to the Board of Patent Appeals & Interferences
  - A notice is being separately sent to the Board of Patent Appeals & Interferences that this Request for Continued Examination is being filed.

*NOTE: If such a notice is not sent to the Board, they may refuse to vacate a decision rendered after the filing of the RCE but before recognition by the Office of the RCE request under Section 1.114.*

- iv.  Appeal to the U.S. Court of Appeals of the Federal Circuit under 35 U.S.C. 145 or  Commencement of a civil action under 35 U.S.C. 146
  - Prior to the filing of such appeal or commencement of civil action
  - Such appeal or commencement of civil action has been terminated

### ENCLOSURES

3. Enclosed herewith is/are:

**WARNING:** If reply to a final or non-final Office action under 35 U.S.C. 132 is outstanding, the submission must meet the reply requirements of Section 1.111. 37 C.F.R. Section 1.114(b).

- An information disclosure (37 C.F.R. Section 1.98)
- Form PTO-1449 (PTO/SB/08A and 08B)
- An amendment
- New arguments
- New evidence in support of patentability
- Other: Declaration of Richard R. Clikeman Under 37 CFR §1.132 previously submitted on February 28, 2006.

## FEE FOR REQUEST (37 C.F.R. Section 1.17(e)).

4. This application is on behalf of:

<input type="checkbox"/>	Small entity (and status is still as small entity)	\$395.00
<input checked="" type="checkbox"/>	Other than a small entity	\$790.00
Continued Prosecution Request Fee		\$ <u>790.00</u>

## FEE FOR CLAIMS

*NOTE: "The fee for continued examination under Section 1.114 (Section 1.17(e)) does not include additional claims fee (cf. 1.53 (d)(3)(ii))." See Notice of March 10, 2000, 65 Fed Reg 14865, at 14868.*

*37 C.F.R. 1.53(d)(3) : "The filing fee for a continued prosecution application filed under this paragraph is:*

*(i) The basic filing fee as set forth in Section 1.16; and*

*(ii) Any additional Section 1.16 fee due based on the number of claims remaining in the application after entry of any amendment accompanying the request for an application under this paragraph and entry of any amendments under Section 1.116 unentered in the prior application which applicant has requested to be entered in the continued prosecution application."*

5. The fee for claims (37 C.F.R. Section 1.16(b)-(d)) has been calculated as shown below:

						OTHER THAN A SMALL ENTITY			
(Col.1)	(Col. 2)	(Col. 3) SMALL ENTITY							
Claims Remaining After Amendment	Highest No. Previously Paid For	Present Extra Rate		Addit. Fee	OR		Addit. Rate		Addit. Fee
Total	*	Minus	**	=	x \$9 =	\$	x \$18 =	\$	
Indep.	*	Minus	***	=	x \$42 =	\$	x \$84 =	\$	
[ ] First Presentation of Multiple Dependent Claim		+ \$140 = \$				+ \$280 = \$			
		Total Addit. Fee	\$ ____		OR	Total Addit. . Fee	\$ ____		

\* If the entry in Col. 1 is less than the entry in Col. 2, write "0" in Col. 3,

\*\* If the "Highest No. Previously Paid For" IN THIS SPACE is less than 20, enter "20".

\*\*\* If the "Highest No. Previously Paid For" IN THIS SPACE is less than 3, enter "3".

The "Highest No. Previously Paid For" (Total or Indep.) is the highest number found in the appropriate box in Col. 1 of a prior amendment or the number of claims originally filed.

**WARNING:** See 37 C.F.R. Section 1.116.

(complete (c) or (d), as applicable)

- (c)  No additional fee is required.

**OR**

- (d)  Total additional fee required is \$ \_\_\_\_\_.

**EXTENSION OF TIME**

(If an extension of time is appropriate complete (a) or (b), as applicable)

6. The proceedings herein are for a patent application, and the provisions of 37 C.F.R. Section 1.136(a) apply.

- (a)  Applicant petitions for an extension of time, the fees for which are set out in 37 C.F.R. Section 1.17(a)(1)-(4), for the total number of months checked below:

Extension <u>(months)</u>	Fee for other than <u>small entity</u>	Fee for <u>small entity</u>
<input checked="" type="checkbox"/> one month	\$ 120.00	\$ 60.00
<input type="checkbox"/> two months	\$ 450.00	\$225.00
<input type="checkbox"/> three months	\$1,020.00	\$510.00
<input type="checkbox"/> four months	\$1,590.00	\$795.00

Fee: \$ 120.00

If an additional extension of time is required, please consider this a petition therefor.

(check and complete the next item, if applicable)

- An extension for \_\_\_\_\_ months has already been secured, and the fee paid therefor of \$ \_\_\_\_\_ is deducted from the total fee due for the total months of extension now requested.

Extension fee due with this request \$ 120.00

**OR**

- (b)  Applicant believes that no extension of time is required. However, this is a conditional petition and authorization to pay the necessary fees to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

### **TOTAL FEE(S) DUE**

**WARNING:** *The fee for continued examination under Section 1.114 may not be deferred. 37 C.F.R. Section 1.53(f).*

7. The total fee(s) due is/are:

Continued Prosecution Fee (Section 1.17(e))	\$ <u>790.00</u>
Fee(s) for additional claims (if any) (Section 1.16(b)-(d))	\$ _____
Extension of time fee (if any) (Section 1.17(a)(1)-(4))	\$ <u>120.00</u>
Total Fee(s) Due:	\$ <u>910.00</u>

### **PAYMENT OF FEE(S) DUE**

8. Please pay the fee(s) for this continued examination application as follows:

[ ] Check is attached for the sum of	\$ _____
[X] Charge Account <u>18-1850</u> the sum of	\$ <u>910.00</u>
[ ] Charge Credit Card the sum of (Credit Card Payment Form (PTO-2038) attached.)	\$ _____

Please charge any required additional fee(s) for Section 1.17(e), Section 1.16(b)-(d) and/or Section 1.17(a)(1)-(4) to

[X] Account <u>18-1850</u>
[ ] Credit Card (Credit Card Payment Form (PTO-2038) attached.)

### **INVENTORSHIP**

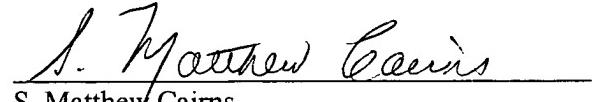
**NOTE:** *Any change of inventors must be via the procedure set forth in 37 C.F.R. Section 1.48. See Notice of March 10, 2000, 65 Fed Reg 14865, at 14868.*

9. This application has amended names as inventors:

[X] the same inventors as previously designated for the claims.

- [ ] fewer than the inventors previously designated and a statement accompanies this request for the deletion of the name or names of the person or persons who are not inventors of the invention now being claimed.
- [ ] a person not named previously as an inventor and a petition under 37 C.F.R. Section 1.48 is/has separately:
- [ ] being filed
- [ ] been filed

Respectfully submitted,

  
\_\_\_\_\_  
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Registration No. 42,378

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